Office of Chief Counsel
Internal Revenue Service

memorandum

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JEKagy

date:

to: Chief, Examination Division, Ohio District
ATTN: [redacted]

from: Assistant District Counsel, Ohio District

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subject: [redacted]
Partnership Statute Extension

DISCLOSURE STATEMENT

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This memorandum responds to your September 1, 1999 facsimile correspondence regarding the statutes of limitations of several partnerships. Because of the imminent expiration of the statute of limitations on assessment of taxes regarding those partnerships, we have issued this memorandum without prior consultation with our National Office. We will notify you of any modifications proposed by the National Office to our conclusions or analysis following the post issuance review of this memorandum by our National Office counterparts.

ISSUE:

Whether a partnership's statute of limitations must be protected in order for the Service to sustain an adjustment to the return of an individual partner under section 1503(d), denying the partner the right to claim the partnership losses reflected on the partnership's Form K-1.

CONCLUSION:

Since adjustments are being proposed against neither the partnership return nor the partnership's Forms K-1, the statute of limitations relating to the partnership is irrelevant. As long as the statute of limitations for the partner is open, the Service retains authority to make a section 1503(d) adjustment to the partner's return.

FACTS:

The Service currently is auditing the [redacted] and [redacted] consolidated federal income tax returns of the [redacted], a CEP taxpayer headquartered in [redacted], Ohio. During those years, one or more of [redacted]'s domestic subsidiaries owned limited partnership interests in partnerships operated as [redacted] and [redacted] (collectively, the "[redacted]" partnerships).

Any audit work planned regarding the partnerships' tax years has been completed. While the statutes of limitations for the [redacted] and [redacted] tax years of both the [redacted] consolidated group and the [redacted] partnerships are currently open, the statutes for the partnerships' tax years are about to expire and the taxpayer has declined the Service's request to execute additional statute extensions for the partnership years. Adjustments have not been proposed and none are contemplated regarding any of the partnership items reflected on the partnerships' Forms 1065.

The CEP audit team is considering proposing section 1503(d) adjustments to the [redacted] and [redacted] tax years of the [redacted] corporate partners, denying the recognition of the partners' distributive shares of the losses incurred by the [redacted] partnerships. This memorandum addresses the audit team's inquiry questioning whether the section 1503(d) adjustments require open partnership statutes in order to be sustainable.

ANALYSIS:

In 1982, Congress enacted the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, establishing a unified audit and litigation proceeding through which determinations as to partnership items were required to be made at the partnership level. In that regard, the term "partnership item" was defined as:

> any item required to be taken into account for the partnership's taxable year under any provision of subtitle A to the extent regulations... provide that ... such item is more appropriately determined at the partnership level than at the partner level.

Section 6231(a)(3).

From the facts recited above, we conclude that the District Director's determination under section 1503(d) disallowing the recognition of the [redacted] partnerships' losses at the partner level is NOT a determination as to a partnership item. Unlike a determination of the amount of losses incurred, if any, by the [redacted] partnerships, the issue of whether an individual partner is precluded from recognizing the losses suffered by the [redacted] partnerships is peculiar to the partner not the partnerships. Here, the losses suffered at the partnership level have neither been challenged nor reduced by the Service. Examination has not proposed, and has no plans to propose, adjustments reducing the amount of losses required to be reported to the partners on the Forms K-1. Whether a particular corporate partner may recognize losses reported to it on Forms K-1 in this instance depends upon, among other things, whether the corporation has sustained a "dual consolidated loss" within the meaning of section 1503. Stated differently, the issue is whether the domestic corporate partners were "dual resident corporations". Such issues are unconnected to the partnership.

As a result of the foregoing, we believe the section 6229(a) statutes of limitations regarding the partnerships are irrelevant to the instant issue. As to assessments against a corporate taxpayer, even where the corporation happens to be a partner in a partnership, the timing of any assessment resulting from a determination that the corporate partner is a section 1503(d) dual resident corporation is controlled by the general rule on assessments found in section 6501, not by section 6229(a).

To the extent you can obtain extensions of the statutes of limitations of the partnership tax years, you may choose to do so. However, under the facts of this case, an adjustment to the consolidated return, disallowing the recognition of partnership losses pursuant to section 1503(d), requires a valid statute of limitations for the partner's return, not the partnership's return.

Please let us know if additional concerns arise in this matter.

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